

**ZONING, SUBDIVISION AND LAND DEVELOPMENT LAW
IN MISSOURI
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A. PUBLIC FINANCING OF DEVELOPMENTS: IT'S CONSTITUTIONAL

Controversial and often misunderstood, statutory procedures to gain public funding for private development projects are a routine and constitutional process and bargaining chip in most every community redevelopment project.

After the statutory procedures are followed, the issue of notes and bonds finance project costs. Depending on the chosen statute, the notes and bonds are repaid with new tax revenues and other sources as briefly discussed herein.

The public financing options come in different shapes and sizes. Here is a list of the most commonly used processes:

<u>Title</u>	<u>Statute</u>	<u>Financing Function</u>
Real Property Tax Increment Allocation Redevelopment Act ("TIF")	99.800 to 99.865 R.S.Mo.	"Municipalities" pledge incremental real property and sales tax revenues to fund infrastructure of the development, inclusive of acquisition of property.
Missouri Transportation Development District Act ("TDD")	238.200 to 238.275 R.S.Mo.	"Political subdivision" imposes additional sales taxes, property taxes and/or special assessments that fund transportation-related public improvements of the development project.
Community Improvement District Act ("CID")	67.1401 to 67.1571 R.S.Mo.	"Political subdivision" imposes additional sales taxes, property taxes and/or special assessments that fund community-related public improvements and services in the development project.
Neighborhood Improvement District Act ("NID")	Art. III, § 38(c) Constitution 67.453 to 67.475 R.S.Mo.	"Municipalities" issue general obligation debt to finance public improvements, which debt is repaid with revenues generated by a special assessment levied against the property benefited by such improvements.

B. THE NEW EMINENT DOMAIN ERA

1. Challenge of the Power of Eminent Domain:

A. Kelo v. City of New London, CT – US S/CT (2005)

Ms. Kelo's land was condemn for Public Use of development. The areas was not deemed blighted. Pfizer just wanted the land for its development and it was the highest and best use for the land.

CT State statute authorized condemnation for economic development, i.e. economic development (despite not blighted) = Public Use.

S/Ct had no choice but to allow for the taking given that the state had made the determination of "public use" = economic development.

Missouri enacted new statutes in Chapter 523, see below.

B. Centenne Plaza Development v. Mint Properties (Mo 2007)

Centene Case formed a redevelopment corporation pursuant to Chapter 353.

Under Chapter 353, eminent domain can only be used if the court finds "Blight" – Economic AND Social Liability.

The land planning expert did NOT mention Social Liability; therefore, the burden of proving blight was not met.

Interestingly, the City could have condemned in its own name under TIF Statute where "blight" is a lesser burden to prove.

UPDATE: Centenne acquired property w/o condemnation.

C. City of Arnold v. Tourkakis (Mo 2008): -

City of Arnold approved TIF funds and eminent domain to develop Arnold Commons at Highway 55 and Highway 141 a/k/a the Golden Triangle.

Constitutional Challenge.

Holding: NOT Only Constitutionally Chartered Cities

2. 2006 – Legislative Revision: Chapter 523 Revised Statutes of Missouri
 - a. Alternative Plans Section 523.265
 - i. suggested by Property Owner – Same Property
 - ii. within 30 days (of “60 day Notice”)
 - iii. must be reviewed and addressed in writing by condemnor.
 - c. 60 days (before Filing of Condemnation): 523.250 RS Mo. Notice of Property Rights by certified mail.
 - i. to hire counsel;
 - ii. to make counteroffer and negotiate;
 - iii. to obtain appraisal;
 - iv. to have just compensation determined;
 - v. to seek assistance from ombudsman;
 - vi. to contest the right to condemn;
 - vii. to request the vacation of any easement.
 - d. 30 days (before Filing of Condemnation): 523.253 Purchase Offers with Appraisals and Relocation monies;
 - e. Condemnation Hearing: Public Use/Blight finding.
 - i. Each parcel must be considered (523.274.1);
 - ii. Preponderance of properties required (523.274.1);
 - iii. NO more solely economic development (523.271.1);
 - iv. Farm land cannot be blighted (523.286.1);
 - v. Court finding of Substantial Evidence (523,261);
 - vi. Challenge to blight – expedited - 30 days (523.261);
 - vii. Court of Appeals – can order stay of proceedings (523.261).
 - f. Condemnation Hearing: Good Faith finding (523.256)
 - i. timely and proper notices (21/60/30);

- ii. offer with state-certified appraisal ;
 - iii. opportunity to get own appraisal
(provide 60 day Notice as proof)
 - iv. alternative location has been considered.
 - v. IF NOT GOOD FAITH, attorney fees (523.256)
- g. Commissioners' Duties – Section 523.040:
- i. 10 days notice before viewing;
 - ii. Utilize FMV definition in Section 523.001,
including income approach
 - iii. 45 days for decision unless extended by judge.
- h. Homestead Values – Section 523.001 (3) and 523.039 (2)
- i. 125% if 300 feet w/in residence; and
 - ii. prevents use in same manner.
- i. Heritage Values – Section 523.001(2) and 523.039 (3)
- i. 150% if 50 years of ownership (50% own of biz); and
 - ii. prevents use in same manner.
- i. Section 523.055 - 100 days of possession
- i. 100 days of possession from “ date of Award.”
 - ii. 90 days from Writ of Possession.
 - iii. Questioned by practitioners on both sides.
- k. Relocation Benefits: Section 523.205
- i. residential minimum increased to \$1000.00
 - ii. commercial minimum increased to \$3000.00
 - iii. commercial – reestablishment expenses - \$10,000.00
 - iv. timely notices required

- I. Abandonment: Section 523.259
 - i. Recover attorney fees, expert fees, expenses; AND
 - ii. the Lessor of:
 - a. Damages permitted by the development plan OR
 - b. Owners' actual damages
(not inclusive of above items.)
- m. EASEMENTS: Sections 523.282 and 523.283
 - i. Define location, i.e. no blanket easements (523.282)
 - ii. Cannot expand uses beyond original purposes.
 - iii. Legal survey of metes and bounds not necessary so long as there is an express statement that the location of the burden shall be fixed to the area occupied by the initial structure. Upgrades are permitted.
 - iv. Attorney fees permissible upon trespass.

C. DEDICATIONS & EXACTIONS

- 1. Conveyance of Land by Deed: Section 442.020 RS Mo.
- 2. Conveyance by Plat: Section 445.010 RS Mo.
 - a. applicable to subdivisions,
 - b. creates a perpetual easement (despite use of word "fee");
 - c. easement (even unused) will not be considered to be abandoned, but can only be vacated under Section 71.270,
 - d. common law dedication possible if statute not precisely followed, if plat not recorded or if not approved by the city or county.
 - e. Practice Points:
 - i. Limit (or not) the use of the easement.

- ii. Penalty for selling (or offering to sell) lots before plat recorded: \$300.00 per lot.
 - iii. Future landowners can enforce the covenants
 - iv. Judgment of Mandamus issued and damages pursuant to 42 USCS Section 1983 when city refused to approve plat.
3. Compensable Taking: Forced Dedication (Exaction)
Nollan (v. California) and Dolan (v. City of Tigard) result:
- a. the regulation must be appropriate exercise of authority;
 - b. the effect must be reasonably related to the project impact;
 - c. fee in lieu of dedication must given even greater scrutiny.